

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNY DOFNER,

Defendant.

)
)
)
)
)
)
)
)
)
)

CASE NO. 8:09CR81

**MEMORANDUM
AND ORDER**

This matter is before the Court on the motion filed by the Defendant, Denny Dofner, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255(f)(3) (“§ 2255 motion”) (Filing No. 331).

On October 29, 2013, this Court denied the Defendant’s previous § 2255 motion. (Filing Nos. 317, 318.) When a second § 2255 motion is filed:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255.

Therefore, the Defendant must proceed accordingly with the Eighth Circuit Court of Appeals. Without the required certification from the Eighth Circuit, this Court cannot consider the merits of the Defendant’s second § 2255 motion and the pending motion will be denied.

IT IS ORDERED:

1. The Defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (f)(3) (Filing No. 331) is denied;

2. A separate Judgment will be issued denying the § 2255 motion; and

3. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 30th day of June, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge